

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

VERNA N. GHOLSON
(Claimant)

PRECEDENT
BENEFIT DECISION
No. P-B-147
Case No. 72-4767

S.S.A. No. :

DEPARTMENT OF HUMAN
RESOURCES DEVELOPMENT

The Department appealed from Referee's Decision No. LA-15430 which held the claimant was not disqualified for benefits under section 1257(b) of the Unemployment Insurance Code. We have considered the written argument submitted by the Department.

STATEMENT OF FACTS

The claimant has many years of experience as a food and cocktail waitress. She worked steadily for one employer for over nine years and lost the job when the employer went out of business. She obtained another waitress position which terminated in November 1971 after ten months. In December 1971 she had one week's work. Thereafter, she was unemployed for approximately four months.

On April 17, 1972 a Department representative called the claimant and referred her to a restaurant for work. The reference was for a waitress position at a wage of \$1.75 per hour. She applied in person for the work. The employer informed her that the job required her to work six days a week, eight hours a day for a total of 48 hours per week. The claimant stated to the employer she would not work more than 40 hours a week and refused the job.

The claimant had never before worked more than 40 hours per week. Nothing prevented her from working 48 hours except personal preference. She testified that the job was suitable in all respects except for the hours.

A Department representative testified that a 48-hour week is not uncommon in the restaurant industry. The Department representative also pointed out that the larger restaurants in the Los Angeles area usually have a 40-hour workweek but the smaller restaurants frequently require employees to work 48 hours. The prospective employer in this case was a small establishment.

REASONS FOR DECISION

Section 1257(b) of the California Unemployment Insurance Code provides that a claimant shall be disqualified from benefits if he has without good cause failed to apply for suitable work when notified by a public employment office.

Suitable work is defined by section 1258 of the code in the following language:

"'Suitable employment' means work in the individual's usual occupation or for which he is reasonably fitted, regardless of whether or not it is subject to this division.

"In determining whether the work is work for which the individual is reasonably fitted, the director shall consider the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence. Any work offered under such conditions is suitable if it gives to the individual wages at least equal to his weekly benefit amount for total unemployment."

Section 1350 of the Labor Code establishes a maximum of eight hours of employment in any one day and a maximum of 48 hours of employment in any one week for women working in the restaurant industry.

The claimant's only reason for refusing the offered work was the requirement that she work 48 hours per week. A 48-hour week is customary in a portion of the restaurant industry. Also, such a workweek is authorized in this state by the Labor Code. Thus, we must conclude that the work offered the claimant was suitable. The only remaining issue is whether or not she had good cause for refusing the offer.

We have consistently held that a dislike for certain days or hours for noncompelling personal reasons does not constitute good cause for refusing suitable work. Since the claimant's only reason for refusing the work was her personal dislike for the hours, it follows that she was properly disqualified for benefits under section 1257(b) of the code.

DECISION

The decision of the referee is reversed. The claimant is disqualified for benefits under the provisions of section 1257(b) of the code.

Sacramento, California, September 12, 1972.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ROBERT W. SIGG, Chairman

CLAUDE MINARD

JOHN B. WEISS

CARL A. BRITSCHGI

DISSENTING - Written Opinion Attached

DON BLEWETT

DISSENTING OPINION

I think it unfortunate that this case has been selected for publication as a precedent decision.

Section 1259 of the Unemployment Insurance Code provides in part that no work or employment shall be deemed suitable and benefits may not be denied for refusing new work:

"If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality."
(Emphasis added)

In this case the claimant refused the work because it required that she work eight hours per day, six days per week. What does the record show with respect to the prevailing hours or days of work in the restaurant industry? A determination interviewer in the Department was sworn as a witness and stated as follows:

"Q For what reason was the claimant disqualified from receiving benefits for four weeks?

"A Because she refused or precluded an offer of suitable work for noncompelling reasons. Unfortunately 48 hours is not an unheard thing in the culinary industry.

"Q Have you any idea what percentage of the jobs are 40 hours a week and what are 48 hours?

"A I'd say 48 hours is a smaller part of the labor market. Percentage I couldn't quote. But there are some places that open as early as 6:00 in the morning and stay open until 2:00 where they do have 48-hour shifts. It seems in the smaller establishments there seems to be a policy more than your large restaurants."

It is further noted in a record of interview dated May 1, 1972:

" . . . a restriction to no more than a 40 hr. week, except on occasion would not be a significant restriction - vast majority no more than 40 hrs a week unless occasionally someone doesn't show up."

Based upon this kind of evidence, I am not prepared to say that the hours of work in this job were not substantially less favorable to the claimant than those prevailing for similar work in the locality. To me the clear import of what little evidence we have on the point is to the effect that a 40-hour workweek prevails in the restaurant industry in Los Angeles.

There was a time in the history of American labor when workers desired to obtain all the hours of work the employer could offer to them. For the most part, this was due to the fact that the hourly wages paid were so low that the breadwinner of a family was obligated to accept all available work in order to provide for their survival. Fortunately, this condition no longer prevails and it is the recognized desire of workers to reduce their working hours so that they may have more time to enjoy the fruits of their labors. It is generally accepted that 40 hours still constitute the normal workweek. Consequently, I would conclude that a job which requires 48 hours of work, six days per week is substantially less favorable to an individual and consequently is unsuitable. For such reasons, I would hold the claimant not disqualified for benefits under section 1257(b) of the code.

DON BLEWETT